IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.9 of 1996
Date of decision: 5.9.2006

The Commissioner of Income Tax, Jalandhar

...Petitioner

v.

M/s Ambika Forgings, Jalandhar.

Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Dr. N.L.Shrda, Advocate for the revenue.

JUDGMENT:

Following question of law has been referred for opinion of this court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, in respect of assessment year 1987-88:-

> "Whether, on the facts and in the circumstances of the case, the Commissioner of Income Tax (Appeals) and the Tribunal have rightly upheld the claim of the assessee for deduction of Rs.3,33,658/- and Rs.7,10,029/- allegedly paid as commission to Shri Neeraj Goel and late Shri B.M.Goel and whether the findings recorded by the Commissioner of Income-tax (Appeals) and the Tribunal are perverse?"

The assessee is an exporter of Hand-tools. Return declaring income of Rs.3,82,990/- was filed by the assessee on 31.8.1987. During the course of assessment proceedings, the AO found that the assessee claimed to have paid an amount of Rs.3,33,652/- to Shri Neeraj Goel Prop. of M/s. N.K.Rubber Industries, Jalandhar. Similarly, it was also found that the assessee had paid two cheques of Rs.4,98,933/- and Rs.2,11,096/- to M/s.

Punjab Rubber & Allied Industries, a proprietary concern of Shri B.M.Goel, who happened to be the father of Shri Neeraj Goel. The AO disallowed these amounts holding that the claim of commission paid was not a genuine claim vide order dated 28.4.1988.

The CIT(A) and the Tribunal did not approve the said view and held that the commission paid was genuine business expenditure.

We find that in T**he Commissioner of Income Tax, Jalandhar v. M/s Knit Foulds (P) Limited, Kapurthala**, ITR No.191 of 1995, decided on 9.8.2004, this court held that amounts paid as commission are permissible deductions. It was observed by this court in **Commissioner of Income-tax v. Indo Asian Switchgears (P) Ltd.** (2002) 257 ITR 645:-

> "Admittedly, the provisions of section 37(3A) of the Act place an embargo on the expenses incurred on the advertisement, publicity and sales promotion. This would mean that the expenses claimed by an assessee in connection with the advertisement, etc., have to be scrutinised and reduced in accordance with the slab prescribed in section 37(3A) of the Act. However, a discount allowed by an assesseed to an agent is not an expense in connection with the publicity or advertisement, etc. It is an amount forgone by the assessee in favour of the dealer for effecting the actual sale. It is not like the fashion show conducted by a garment manufacturer, but a commission allowed to a dealer. Trade discount cannot be treated as a wasteful expenditure incurred by an assessee in connection with the sales' promotion. It is not a gift as given on a festival or a free sample as distributed by a pharmaceutical company to the doctors but an actual commission allowed or paid to a dealer. It does not fall within the mischief of section 37(3A) of the Act."

Only question is to be decided whether finding of the Tribunal that commission paid was genuine business expenditure, was perverse.

Finding recorded by the Tribunal is as under:-

"6. We have considered the rival submissions, Sh. B.M. Goel Prop. M/s Punjab Rubber and Allied Industries was an established person in the export trade and he himself was carrying on business at a large scale, as noted by the Ld. CIT(A) in para 4.5 of the impugned order Sh. B.M. Goel has declared a gross profit of Rs.10,60,942/- in respect of his own business over and above the commission income of Rs.7,10,029/- recived by him from the assessee. Sh. B.M. Goel also paid commission of Rs.4,68,218/- but it is not the case of the Assessing Officer that the above commission of Rs.4,68,218/- has been paid to the assessee or any of its nominees. Therefore, it cannot be said that M/s Punjab Rubber and Allied Industries was a bogus concern.

6.1 Similarly M/s N.K. Rubber Industries Prop. Sh. Neeraj Goel was also in the business of export and he declared a gross profit of Rs.1,75,053/- in relation to his business of M/s N.K. Rubber Industries and besides that he declared commission income of Rs.3,32,842/- from the assessee and further amount of Rs.1,16,000/- on account of commission from other parties.

6.2. S/Sh. B.M. Goel and Neeraj Goel have already been taxed in relation to the commission earned by then from the assessee. Further the assessee has given complete details of sales made by the assessee to parties in Kuwait, G.D.R., West Germany as well as U.S.A., Greece, Australia, France, Italy, Hungary etc. in relation to which commission at 7% has been paid by the assessee to S/Sh. Neeraj Goel and late Sh. B.M. Goel.

6.3. It is also an admitted position that S/Sh. Neeraj Goel and B.M. Goel are not related to any of the partners of the assessee firm and as such the provisions of the

section 40A(2) are not applicable.

6.4 It is also not the case of the Revenue that the commission paid has come back to the assessee firm or any of its partners in any form after having been paid to S/Sh. Neeraj Goel and B.M. Goel.

7. In view of the matter, we do not have any hesitation in upholding the order of Ld. CIT(A) holding that the commission paid by the assessee to Sh. Neeraj Goel and Late Sh. B.M. Goel was a genuine business expenditure and the Assessing Officer was not justified in making the impugned addition."

No material which may not have been taken into account by the Tribunal has been indicated nor it is shown that the finding recorded by the Tribunal is vitiated by misreading or by taking into account non-existent material.

We are unable to hold that the findings recorded by the CIT(A) and the Tribunal are perverse.

Question is accordingly answered against the revenue and in favour of the assessee.

(Adarsh Kumar Goel)
Judge

September 5, 2006 (Rajesh Bindal)
'gs' Judge